IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NOS.24,25,26 AND 27 OF 2004

CRIMINAL REVISION APPLICATION NO. 24 OF 2004

Mr. Valmiki Faleiro,
Major of age,
Resident of 160, Mons, Ganganelli
Rebello Rd.,
Near Holy Spirit Church,
Margao, Goa - 403 601. ... Applicant

versus

1. Mrs. Lauriana Fernandes
e Diniz, major of age,
widow, housewife,
wife of late Mr. Pedro Caetano
Diniz.

2. Ms. Luciana Diniz,
major of age,
daughter of late Piedade
Caetano Diniz,

Both residents of Xeldem,
Quepem, Goa.
Having their registered
address at C/o Camilo Baptista,
H.No.441, Sanglem Waddo,
Majorda, Salcete, Goa.

3. State ... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Ms. S. Naik, Advocate for the Applicant.

Mr. M. S. Sonak, Advocate for Respondent Nos.1 and 2.

Mr. S. N. Sardessai, Public Prosecutor for Respondent No.3.

CRIMINAL REVISION APPLICATION NO. 25 OF 2004

Mr. Valmiki Faleiro,
Major of age,
Resident of 160, Mons. Ganganelli
Rebello Rd.,
Near Holy Spirit Church,
Margao, Goa - 403 601. .... Applicant

versus

1. Mr. Vilas Vaicunthrao Sardessai,
major of age,
Printer and Publisher of
"The Navhind Times",
Resident of Surekha Building,
2nd floor, Altinho, Panaji-403 001
(Goa).

2. State ... Respondent

Mr. S. D. Lotlikar, Senior Advocate with Ms. S. Naik, Advocate for the Applicant.

Mr. M. S. Usgaonkar, Senior Advocate with Mr. Sudin Usgaonkar, Advocate for Respondent No. 1.

Mr. S. N. Sardessai, Public Prosecutor for Respondent No.2.

CRIMINAL REVISION APPLICATION NO. 26 OF 2004

Mr. Valmiki Faleiro,
Major of age,
Resident of 160, Mons. Ganganelli
Rebello Rd.,
Near Holy Spirit Church,
Margao, Goa - 403 601. ... Applicant

versus

1. Mr. Arun Sinha,
   Editor, "The Navhind Times",
   "Navhind Bhavan"
   Rua Ismael Gracias
   Panaji, Goa.

2. State ... Respondent

Mr. S. D. Lotlikar, Senior Advocate with Ms. S. Naik, Advocate for the Applicant.

Mr. M. S. Usgaonkar, Senior Advocate with Mr. Sudin Usgaonkar, Advocate for Respondent No.1.

Mr. S. N. Sardessai, Public Prosecutor for Respondent No. 2.

CRIMINAL REVISION APPLICATION NO. 27 OF 2004

Mr. Valmiki Faleiro,
Major of age,
Resident of 168,
Mons. Ganganelli Rebello Rd.,
Near Holy Spirit Church,
Margao, Goa - 403 601. ... Applicant

versus

1. M/s Dempo Industries(Pvt.) Ltd.,
   Through its Division,
   The Navhind Papers & Publications,
   Having its registered Office at
   Dempo House, Campal,
   Panaji, Goa,
   Represented by its
   General Manager(Finance),
   Shri G. Balasubramanian

2. State ... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Ms. S. Naik, Advocate for the Applicant.

Mr. M. S. Usgaonkar, Senior Advocate with Mr. Sudin Usgaonkar, Advocate for Respondent No.1.

Mr. S. N. Sardessai, Public Prosecutor for Respondent No. 2.

CORAM: N. A. BRITTO, J.

Date of reserving the
Judgment: 3-3-2005.

Date of pronouncing
the Judgment: 10-3-2005.

J U D G M E N T

These are complainant's revision applications arising from C.C.

No.284/P/2001 and against the common Order of the learned Sessions Judge, Margao dated 22-7-2004 in Criminal Revision Applications Nos.63, 64, 67 and 68 of 2003. Hence, this common Judgment.

2. Briefly stated, the accused nos.1 and 2 in the said criminal case put a public notice on "Navhind Times" dated 13-5-2001 which reads as follows:-

> "Notice is hereby given to the public that one Mr. Valmiki Faleiro, resident of Margao and others who are developing and selling the plots through their Power of Attorneys, agents, etc. form the property surveyed between Nos.251 to 522 including all sub divisions of village Cacora, taluka of Quepem are not the owners of the said property. The actual owners and the holder of the said property as well as the property surveyed under nos.1 to 323 including all sub-divisions of village Xeldem and parts of adjoining villages Amona, Sirvoi, Avedem, Chalfi, Assolda, Cottombi, Xic Xelvon, Xelvon, Odar, Cusmane, Ambaulim, Quepem and Deao all taluka of Quepem are Mrs. Lauriana Fernandes e Diniz, Luciana Diniz and Anastasia Diniz.
>
> Public is hereby warned by this notice to refrain from purchasing the plots or not to enter into any kind of sale transaction of whatsoever nature in respect of

> the said property with the aforesaid persons who have no right, title to enter into sale transaction. Despite this publication of notice the public still enter into transaction of sale, then they shall do so at their own risk and consequences.
>
> Mrs. Lauriana Fernandes e Diniz, Luciana Diniz and Anastasia Diniz 12/5/2001".

3. Accused No.4 is the Printer and Publisher, accused no. 5 is the Editor and accused no.6 are the owners of the said "Navhind Times".

4. The complainant after having read the said notice filed a complaint against the aforesaid accused and accused no.3 Anastasia Diniz whose name was subsequently deleted, under Section 500 r/w Section 499 I.P.C.

5. After the complainant examined himself on oath and two other witnesses, the learned J.M.F.C. was pleased to issue process against the aforesaid accused and the accused nos.1 and 2 on or about 25-10-2002 filed an application for recalling the process issued against them and the other accused also filed separate applications. The learned J.M.F.C. by his Order dated 5-9-2003 dismissed the said application, for recalling of process.

6. The said accused filed four criminal revision applications before the learned Sessions Judge which the learned Sessions Judge was pleased to allow and set aside the Order of the learned J.M.F.C. dismissing the applications of the accused, for recalling of process.

7. As per the complainant the said notice contains imputations and allegations against the petitioner which are defamatory. As per the learned J.M.F.C. the said notice had a direct impact on the reputation and business of the said complainant. The learned J.M.F.C. was also of the opinion that accused nos. 4, 5 and 6 had not verified the correctness of the contents of the said notice prior to its publication. The learned Sessions Judge in his impugned Order expressed the view that he was unable to agree with the finding of the learned J.M.F.C. and held that there was no prima facie case made out by the complainant for the issuance of process. The learned Sessions Judge also felt that the said notice did not contain any statement which could be said to be defamatory and intended to lower the reputation of the complainant in the eyes of the public.

8. Admittedly, the applications filed by the accused for recalling the process issued against them were filed prior to the decision of **Adalat Prasad** v. **Rooplal Jindal and others** decided on 25-8-2004(JT 2004 (7)

SCC 243) wherein the Hon'ble Supreme Court has now declared that the law laid down in the case of **K. M. Mathew** v. **State of Kerala**(1992 Cri.L.J. 3779) is no longer good law and once process is issued against an accused by the learned J.M.F.C. the same cannot be recalled.

9. Mr. S. D. Lotlikar, the learned Senior Counsel on behalf of the complainant (applicant herein) has submitted that the very application for recalling of the process filed by the accused was not maintainable and the learned J.M.F.C. had therefore no jurisdiction to entertain an application for recalling of process and, therefore, irrespective of the merits of the Order passed by the learned J.M.F.C., the revision application filed before the learned Sessions Judge ought to have been dismissed by him. Mr. Lotlikar has further submitted that the exercise done by the learned Sessions Judge was premature and all that the learned Sessions Judge was required to do was to examine the correctness of the Order, not issuing the process, but in refusing to recall the process issued against the accused.

10. On the other hand, Mr. M. S. Sonak, the learned Counsel on behalf of respondent nos.1 and 2 (and Mr. M. S. Usgaonkar, the learned Senior Counsel on behalf of accused nos.4 to 6 agreeing with him), has submitted that the Order of the learned Sessions Judge can be read into two parts. According to them, the learned Sessions Judge has categorically held

that the learned J.M.F.C. was not justified in not recalling the process issued against the accused and not only that he has proceeded further and held that the learned J.M.F.C. was not at all justified in the first instance to issue process against the accused for offences punishable under Section 500 r/w Section 499 I.P.C.

11. Next, it is the submissions of learned Counsel and learned Senior Counsel on behalf of the accused that these revision applications are filed in exercise of discretionary jurisdiction of this Court and since the view held by the learned Sessions Judge was not only correct but a plausible one and was within the jurisdiction of that Court, this Court ought not to exercise its discretion in favour of the complainant.

12. Reliance has been placed by Mr. Usgaonkar on the case of **Krishnan and another** v. **Krishnaveni and another** (AIR 1997 SC 987) wherein the Supreme Court, speaking through three Judges, has stated that the revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that its subordinate Courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior Criminal Courts or to prevent miscarriage of justice. The object of Section 483 and the purpose behind

conferring the revisional power under Section 397 r/w Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to meet out justice. The Supreme Court has held that the power of the High Court under Section 397 r/w Sections 401 and 482 is very wide but the High Court must exercise such power sparingly and cautiously.

13. In my view, the submissions of the learned Senior Counsel Mr. Lotlikar cannot be accepted. Section 397 of the Code of Criminal Procedure, 1973 deals with the calling for records to exercise powers of revision and provides that the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

14. Needless to observe it was within the province of the learned Sessions Judge to exercise suo motu powers of revision and to set right a

wrong order whenever it came to his notice that such order was incorrectly made or illegally or improperly passed. In addition to Section 397 of the Code, Section 399 deals with powers of the Sessions Judge in matters of revision and Section 401 deals with the powers of the High Court in matters of revision. The learned Sessions Judge, in my view, was fully justified in examining the correctness of the Order which was challenged before him, namely, the Order refusing to recall process and he was also fully justified on his own motion, there being no bar of any limitation to exercise suo motu powers of revision to examine the correctness of the first Order which was refused to be recalled by the learned J.M.F.C. In my view, therefore, there has been no procedural irregularity committed by the learned Sessions Judge in revising the Order issuing process against the accused at a time when the Order refusing recall of process was challenged before the learned Sessions Judge. This Court will not exercise its discretionary revisional jurisdiction to set aside an order which will have the effect of restoring an illegal order.

15. Next, Mr. Lotlikar submits that the said notice is squarely defamatory as it attributes dishonest intention to the complainant saying that he lacks business character and propriety. Referring to the case of accused nos.4 to 6, Mr. Lotlikar submits that at the most they may have a defence to prove at the trial but at this stage their so-called good faith is a

matter of fact which will be required to be proved at the trial of the case, there being no assumption that they have necessarily acted in good faith. Mr. Lotlikar, therefore, submits that the onus of proving that their case comes either under ninth or tenth exceptions of Section 499 will be upon them during the trial.

16. On the other hand, Mr. Sonak, the learned Counsel on behalf of accused nos.1 and 2 submits that the notice of the type published by accused nos.1 and 2 are nothing short of routine notices which one reads on the newspapers almost everyday and the same does not amount to any defamation of the complainant as it was issued by the said accused only in an attempt to protect their right to their own property. Mr. Sonak submits and Mr. Usgaonkar, learned Senior Counsel agrees with him, that the implications of the complainant that the said notice is defamatory are too far fetched. Mr. Sonak submits that it is legitimate for the said accused nos.1 and 2 to assert their rights to property which they believe belongs to them.

17. Mr. Usgaonkar, learned Senior Counsel on behalf of the Publisher, Editor and owner submits that the said notice is not per se defamatory and this is a position accepted by the complainant as can be

seen from the Order of the learned Sessions Judge in last part of para 11 of the impugned Order.

18. In my view, the contention raised on behalf of the complainant that the said notice is per se defamatory or that it attributes dishonest intention to the complainant that he lacks business character and propriety cannot be accepted on the face of reading the said notice.

19. Section 499 of the Indian Penal Code, 1860 defines defamation and a part of the said Section could be reproduced with advantage:-

> "Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputations concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinunder excepted, to defame that person.
>
> Explanation 4 provides that no imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person

> is in a loathsome state, or in a state generally considered as disgraceful".
>
> The Ninth Exception provides that it is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.
>
> The Tenth Exception provides that it is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good (Emphasis supplied).

20. Mr. Lotlikar has placed reliance on the case of **M. N. Damani** v. **S. K. Sinha** (AIR 2001 SC 2037) wherein the Supreme Court stated as follows:

> "There are no special features in the case to say that it is not expedient and not in the interest of justice to permit a prosecution to continue. The learned Judge has failed to apply the tests indicated in para 7 of the judgment on which he relied. The High Court could not say at that stage that there was no reasonable prospect of conviction resulting in the case after a trial. The Magistrate had convicted the respondents for

> the offences under Section 138 of the Negotiable Instruments Act and the appeal filed by the respondents was also dismissed by the learned Sessions Judge. Assuming that the imputations made could be covered by exception 9 of Section 499, IPC, several questions still remain to be examined - whether such imputations were made in good faith, in what circumstances, with what intention, etc. All these can be examined on the basis of evidence in the trial".

21. On the other hand, it can be seen from the case of **Rajendra Kumar Sitaram Pande and others** v. **Uttam and another** (AIR 1999 SC 1028) that the Supreme Court did not allow the case to continue further because Exception 8 to Section 499 clearly applied and consequently held that calling upon the accused to face trial would be a travesty of justice. It was the case where a complaint was filed that the accused persons had made a complaint to the Treasury Officer, Amravati, containing false imputations to the effect that the complainant had come to the office in a drunken state and abused the Treasury Officer, Additional Treasury Officer and the Collector and circulated to the office in the filthy language and such imputations were made with the intention to cause damage to the reputation and services of the complainant. In order to decide the correctness of the averments in the complaint, the learned Magistrate instead of issuing process had called upon the Treasury Officer to hold an

inquiry and submit a report to him. The Supreme Court, therefore, held that the accused persons had made a report to the Superior Officer of the complainant alleging that he had abused the Treasury Officer in a drunken state and the case would be covered by Exception 8 to Section 499 I.P.C. and in such a case requiring the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process would not be in the interest of justice and that it was a fit case for quashing the order of issuance of process and the proceedings itself. In my view, the observations of the Hon'ble Supreme Court in the above two cases must be restricted to the facts of those cases and as not laying down any principle of law as such.

22. The essence of offence of defamation is the harm caused to the reputation of a person. Character is what a person actually is and reputation is what neighbours and others say he is. In other words, reputation is a composite hearsay and which is the opinion of the community against a person. Everyone is entitled to have a very high estimate of himself but reputation is the estimation in which a person is held by others. The commission of offence of defamation or publishing any imputations concerning any person must be "intending to harm or knowing or having reason to believe that such imputation will harm, the reputation of such person (emphasis supplied). The notice in question on the face of

it does not contain any such imputation which could be said to harm the reputation of the complainant. On the other hand, a bare reading of the said notice shows that it has been published by accused nos. 1 and 2 with a view to protect the right to the property which they believe they have a right. A person reading the said notice may at first flush be a little amused that the said accused are claiming a set of villages rather than think that it is published with a view to defame the complainant. All that the said accused have conveyed by the said notice is that the property/properties do not belong to the complainant but belong to them and that anyone dealing with the complainant will be doing so at their own risk. The contention that the said notice is per se defamatory and that it attributes dishonest intention that the complainant lacks business character and propriety appears to be a figment of the complainant's imagination. Such a conclusion cannot be culled out by a normal prudent person from a reading of the said notice which apparently was published by the said accused nos.1 and 2 to protect a right which they believe they have to the property and with a view to warn others that in case they enter into any transaction of sale with the complainant they would be doing so at their own risk and consequences. A reading of the notice, on the face of it, does not show that it was published with intention or knowledge to harm the reputation of the complainant. In my view, the learned Sessions Judge was

right in exercising his discretion to quash and set aside the Order issuing process against the aforesaid accused.

23. The Supreme Court time and again, has reminded us that summoning an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course. It appears that there is an impression gaining ground that all that a complainant is required to do is to bring one or two witnesses in support of the allegations to be made by him and then harass an accused by getting process issued against him. A Magistrate is required to apply his mind to the facts of the case, and the law applicable thereto, and then find out whether the ingredients of the offences have been made out and then only issue process against an accused since otherwise after the process is issued cases take a long time to be decided and this only causes harassment to innocent persons. This course does not appear to have been followed by the learned Judicial Magistrate, First Class.

24. In view of the above, there is no case at all for my interference in these revision applications. Consequently the same are hereby dismissed with costs.

N. A. BRITTO, J.

RD.